the conclusion stated in the Commission's findings that the merchandising conduct of the company does not co stitute a contract or contracts whereby resale prices are fixed, maintained, or enforced. The specific facts found show suppression of the freedom of competition by methods in which the company secures the co-operation of its distributors and customers, which are quite as effectual as agreements express or implied intended to accomplish the same purpose. By these methods the company, although selling its products at prices satisfactory to it, is enabled to prevent competition in their subsequent disposition by preventing all who do not sell at resale prices fixed by it from obtaining its goods.

"Under the facts established we have no doubt of the authority and power of the Commission to order a discontinuance of practices in trading, such as are embodied in the system of the Beech-Nut Company.

"We are, however, of opinion that the order of the Commission is too broad. The order should have required the company to cease and desist from carrying into effect its so-called Beech-Nut policy by co-operative methods in which the respondent and its distributors, customers and agents undertake to prevent others from obtaining the company's products at less than the prices designated by it—(1) by the practice of reporting the names of dealers who do not observe such resale prices; (2) by causing dealers to be enrolled upon lists of undesirable purchasers who are not to be supplied with the products of the company unless and until they have given satisfactory assurances of their purpose to maintain such designated prices in the future; (3) by employing salesmen or agents to assist in such plan by reporting dealers who do not observe such resale prices, and giving orders of purchase only to such jobbers and wholesalers as sell at the suggested prices and refusing to give such orders to dealers who sell at less than such prices, or who sell to others who sell at less than such prices; (4) by utilizing numbers and symbols marked upon cases containing their products with a view to ascertaining the names of dealers who sell the company's products at less than the suggested prices, or who sell to others who sell at less than such prices in order to prevent such dealers from obtaining the products of the company; or (5) by utilizing any other equivalent co-operative means of accomplishing the maintenance of prices fixed by the company."

Justice Holmes, Justice McKenna, Justice Brandeis and Justice McReynolds, dissenting.

Livestock Not "Perishable Property."—In Reigel *v.* Franzel, 191 N. Y. Supp. 126, the Supreme Court, Seneca County, held that the New York Civil Practice Act, sec. 980, authorizing the court to direct the sale of the property in controversy if it is perishable or liable to be injured by keeping, applies only where the injury feared is an

impairment, physical damage or mutilation, or where the property is subject to an immediate, or nearly immediate, destruction, and does not authorize the sale of livestock though such stock is subject to deterioration in the course of time and will eventually perish.

The court said in part:

"This application is based upon the proposition that to keep the livestock throughout the winter would be unprofitable; that its present value, plus the cost of maintenance until spring, would be greater than its then probable value. If that be so, doubtless it would be good business policy to sell it, but the difficulty is that business expediency is not one of the grounds for an order to sell mentioned in section 980 of the Civil Practice Act (Laws 1920, c. 925). That section applies only to perishable property, and that liable to be injured by keeping. That livestock will ultimately deteriorate, and is in a sense perishable, is undoubtedly true. It is so with everything in this world—'All things pass away'—but it cannot be said, I think that the Legislature intended, because of this admitted fact, to give the court power to sell anything and everything. The section is to be construed in the light of the ordinary use and meaning of words. Thus 'injury' as it is used has reference to an impairment, a physical damage or mutilation, while 'perishable' must be held to intend what is subject to an immediate, or nearly immediate, entire destruction. The section was enacted as a provision against loss of property which by its nature, or unchangeable condition or situation is within a short time certain to either deteriorate or become a total loss."

"Moonshine" Not Subject of Larceny.—In People *v.* Spencer, 201 Pac. 130, the California District Court of Appeals, 3rd District, held that intoxicating liquor manufactured for beverage purposes subsequent to the time the 18th Amendment took effect, is not the subject of larceny, and that a person entering a building with the intent to take such liquor cannot be convicted of burglary.

The court said in part:

"The theory upon which the demurrer was sustained by the court below and upon which insistence upon an affirmance of the judgment is urged in this court is that the article which the information charges that the defendant entered the building with the intent to steal is not property or thing of value and consequently is not a subject of larceny. This theory is founded upon the provisions of the act of Congress, known as the Volstead Act (41 Stat. 305), which was enacted for the purpose of properly enforcing or of facilitating the proper enforcement throughout the United States of the provisions of the Eighteenth Amendment of the federal Constitution, prohibiting the manufacture, sale, transportation, possession, etc., of intoxicating liquors.

"Under the provisions of said act any liquors which contain one-half of 1 per centum or more of alcohol by volume to be used as bev-